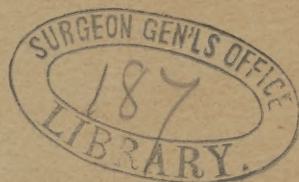


Ray (I.)

DUP.

The Duncan Will Case.

—♦♦♦✓
By I. RAY, M. D.
—♦♦♦—

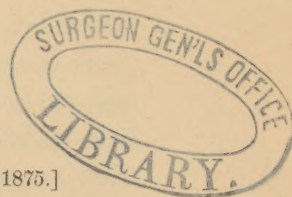


[From the *American Journal of Insanity*, for January, 1875.]

D. J. Hays,
with respects of the
writer.

THE DUNCAN WILL CASE.

—...—
By I. RAY, M. D.
—...—



[From the *American Journal of Insanity*, for January, 1875.]

In 1849, there came to this country, from Ireland, Andrew Duncan, a land surveyor, and settled in Pittsburg. He was accompanied by a part of his family, the rest following, three years afterwards. It consisted then, besides his wife, of seven sons and one daughter, the eldest being sixteen years old, and the youngest, two. Thomas, next but one to the oldest, and then twelve years old, obtained employment in a humble capacity, in an iron establishment, until, in 1859, he concluded to try his fortunes in the oil regions. At first he was unsuccessful, but in 1863, there came a turn in the tide which swept him on to riches. By means of a few oil wells and judicious land investments, he became possessed of nearly \$400,000 at the time of his death, eight years afterwards. In 1864, his health began to fail, some bronchial troubles then appeared which never left him; he complained of his throat, and went about much wrapped up. During the early part of this period of failing health, he had some attacks of asthma, and through the whole of it, he had the ways and looks of an invalid, though seldom confined to the house. In 1870, he went abroad

for his health, and while staying with his friend, Mr. James Lindsay, near Belfast, Ireland, in October, he had one of his asthmatic attacks, from which he rallied, and in the early part of November he left the vicinity of Belfast, and spent the winter in the South of Ireland. There, in April next, he again became ill, and went back to the house of his friend, Mr. Lindsay, where he remained until he died, first of June, 1871. On the 20th of May, eleven days previously, he executed his last will and testament, which was contested by the heirs-at-law, on the ground of mental incompetence, in the Circuit Court of Calhoun County, Michigan, held at Marshal, in October and November, 1873. The evidence relating to his mental condition may be conveniently considered under two heads, viz., that founded on the observation of his brothers and a few other persons, during the period extending from 1864, forward towards the latter year or two of his life, and that given by medical experts founded on the testimony in the case.

By the former, he was represented as having been very forgetful, capricious and irritable. They said that business worried him; that he would refer people who came to him on matters of business to his brothers, and that he complained much of his head. His brother James said that in 1865, "he noticed he was a different man from what he was apparently six months or a year before." "He was forgetful, unable to keep names, to recollect transactions, and was continually complaining of his head." "His memory seemed to be entirely gone, except for momentary transactions." "He was very absent minded, very fickle minded." He also said that the testator, when sick—referring to his attacks of asthma—was "very irritable." His brother Richard testified to the same effect. "At one time," he says,

“he complained of its [business] giving him a pain in the head; at other times, of its making him weak; again, after giving attention to it for any length of time, he would become very irritable.” In 1869, these mental infirmities, he thinks, had increased. He was in the habit at one time of dictating his letters to witness, and then copying them, the copy being sent. His brother George says, “the only peculiarity I noticed in him, [date not given, except that it was previous to 1867,] was that he would tell me things about certain men there, and afterwards would deal with the men different from what I would have done under the circumstances.” In “winter of 1866,” he found his brother, the testator, quite ill at Oil City, with one of his asthmatic attacks. When asked by witness what was the matter, he replied that “the doctor intended to poison him.” Then he asked, “who is that man,” pointing to the person who had been attending on him, and said, “I wish you would put that shark out of the room.” His brother William testified, that in 1864, he solicited him to go to Pit Hole and manage his business there, saying, “you know, William, I sometimes can’t foot up four figures, and I forget one day what I do the next. You remember my hurt.” About this time, he had forgotten a thirty days’ note he had given for some firewood, and was angry with his brother for having paid it, until convinced by seeing the note that he had given it. Willis, who had advertised his farm for sale, says, the testator with a view to purchasing it, solicited a call from him, and in the course of the interview, he asked, several times, how many acres were in the farm, and its distance from the railroad. This was in the winter of 1864 and 1865. In the August following, they visited the farm together, when the same repeated inquiry about the number of acres occurred. On

this occasion, he told witness that he had got a blow on the head in the oil regions by the fall of a piece of timber; that he was taken up, and remained unconscious for 24 or 48 hours. "My head bothers me a great deal," he said, "and I don't know as I'll ever get over it, but don't you say a word to ma'am [mother] about it." "He acknowledged," said the witness, "that he was very forgetful, and that the effects of that hurt troubled him, and he was at times very unwell." In speaking of a famous cow, he said his mother "used to make lots of butter from that cow," and that remark he repeated, half a dozen times a day. One night on going to bed, he looked under the bed, into the closets and wardrobe, and the lower drawer of the bureau, under the washstand and into the cupboard, and then pulled out a pistol and placed it under his pillow, saying, "I want to be sure no one is here." At this time, in one of his asthmatic attacks, he suddenly manifested a strong aversion to the witness, though previously very sociable and pleasant, and would not allow him to enter his room. The next day he met witness, they shook hands, and became as good friends as ever. Wallace, who knew him slightly in 1870, called on him to get him to subscribe to a new railroad, and thought "he did not appear like a man of very firm decision of character." Collier, who accompanied Wallace, says, "he seemed to be a very cautious man, so much so that it bordered on timidity." They both say he complained of his head, and wished not to be "bothered with business." Andrus says that at some society meeting, testator was asked to serve on a committee, which he declined, saying, "I do not want to trouble myself with any business; my head troubles me." Hubbard, an assessor of taxes, asked him for an inventory of his property, when he, after mentioning one or two pieces,

hesitated, and said, "you will have to see Richard." Again, he went to see him about some insurance business, while his house was repairing, when he said, after asking one or two questions, "I am all confused about the matter; my house is turned upside down; you will have to see Richard." Addington went with him once to look at a piece of land, and while stepping across a ditch he slipped, and said immediately "he did not want that part of the land, did not want anything to do with it." He once asked witness to do some figuring for him, because it confused him. "There did not seem," says the witness, "to be much continuity of thought." Pixley says of him, that in 1865 and 1867, he would ask the same questions over and over again, and complained of a roaring in his head. Morse says he spoke to him about his trouble with Willis, and he replied that he did not remember it. Colvin says that testator asked him in 1867, to see Brown and ascertain what he, B, would sell his farm for, and the next day had forgotten all about it. Halbert repaired his house in 1869, when he inquired several times the amount of the bill. Hoyt repaired furniture for him, and says that in giving orders, he was very absent minded. Jimmerson, 1866 or 1867, "saw something peculiar in his manner and conduct." He would pace up and down the room, holding his hand to his head, and never seemed to notice people then. Kellogg thought "he had not much stamina of character." Rowell says he failed to enumerate all his property to him, when he, the witness, was inquiring with reference to income tax. He says they drove over to Coldwater, in 1870, to attend a railroad meeting; that he was moody and silent all the way over, and very social and jovial, all the way home. Johnson says "he would tell me things to day, and to-morrow forget all about them." Testator

said "his health was so bad, he did not think he was fit do business." Crane went to him about a bill for lumber, which he promised to pay if right; that he went a second time, two or three weeks afterwards, when he had forgotten all about it. Pugsley says he once rode with him, three-quarters of an hour, when he frequently put his hand on his head, and asked several times if he was an old resident. Raymond mentions an instance of forgetfulness, and says he seemed very absent minded.

This is the case of the contestants so far as it depends on proof of mental impairment, previous to his last illness. Every remark made by their witnesses, every fact given by them, having any bearing on this point, are here faithfully presented, and they certainly fall very far short of what the occasion required, taking them with the smallest abatement for mistake or high coloring. That he may have suffered several years from the blow on the head, as indicated by pain and uneasiness; that, in consequence, attention to business may have sometimes so worried him, as to induce him to put it off upon others when practicable; that it led to some lapses of memory; and that, in connection with his asthmatic troubles, he was occasionally irritable and cross,—all this may have been without implying any impairment of his business capacity. This was abundantly proved by the evidence on the other side. It was testified by a considerable number of persons who had had more or less intercourse with him during this period—some in matters of business, some in casual conversation, some in social gatherings where he took a leading part—that they had observed no forgetfulness, nor any other mental defect, and regarded him as a man of average intellect. Bishop Simpson had known him for many years, and during the latter part

of his life had had considerable intercourse with him, without observing any of these indications of mental impairment. Neither did Mr. Long whose house he made his home when in Philadelphia, and with whom, of course, he must have been quite intimate, observe any. Indeed, it was during this very period when he is represented as having been so forgetful and unfit for business, that he made the greater part of his fortune. On this point the testimony of Prather was remarkably significant. He and his brother formed a partnership with testator, in 1864, which continued several years, during which they made leases, bought and sold property, and obtained an interest in an oil farm, "which transactions," he says, "were made by Thomas G. Duncan himself." He got up the plan on which Pit Hole City was built, in 1866, and he was an active participant in settling up their interests in the oil farm, involving about \$1,300,000.

This kind of testimony renders it certain, that the forgetfulness, worry, irritability, and petulance mentioned by the contestants' witnesses, were of a trivial character, affecting not at all his judgment or capacity for business. Indeed, much less reliance was placed on this evidence, than on that of the medical witnesses. These gentlemen, eight in number, one of whom is a professor in a medical college, some well known beyond their immediate neighborhood, and all with a respectable standing in their profession, declared that the nature of the testator's disease incapacitated him for any such exercise of mind as is required in the making of a will. The office of the lungs, they said, is to purify the blood by eliminating such portions as are no longer fit to be used, and receiving fresh supplies of oxygen from the air. The testator's lungs were found after death to have been rendered by disease in-

capable of performing their special function to such an extent, that the blood could not have been properly purified, and that the brain, which received it, must have been poisoned by it, and consequently incapable, in the nature of things, of anything like healthy mental exercise. Before discussing this opinion, it will be necessary to examine the foundation on which it rests.

Dr. Aickin of Belfast, who attended the testator, states in his deposition, that in October, 1870, he found him suffering with cough, dyspnœa and bloody expectoration, and "discovered that congestion existed to some extent in the upper lobe of the right lung." On the 28th of April, 1871, the same train of symptoms returned, accompanied by congestion in the upper lobe of the right lung, and also at the back and lower part of left lung, together with a mucous râle, in the front and upper part of the left lung, with weak and intermitting action of the heart. On or about the 20th of May, he says, "there was dullness on percussion under the right clavicle, and on auscultation, mucous râle was audible, and the same sign appeared at the lower lobe of the same lung; on deponent examining the left lung, a very feeble respiratory murmur was audible down along the side of the scapula, and also in front, beneath the clavicle. On percussion the whole of the left side of the chest was perfectly dull." In another place he says that "there was some sound indicating presence of emphysema," below the right clavicle.

The autopsy revealed the following conditions: "the rigor mortis has not passed off, the body and upper limbs are much emaciated, the feet and legs are very œdematous and pit on pressure. Chest—the left pleura is distended with an enormous quantity of serum, so as to flatten the lung almost to a condition of carnification, the pleura, both costal and pulmonary, is coated with a

very thick deposit of flocculent lymph, at a few points, especially, posteriorly, adhesions exist between the pulmonary and costal portions of the membrane. The upper part of the lung is firm, evidently air can not have penetrated to many of the vesicles for some time. The greater part of the lower lobe is in a state of hepatization, puriform secretion at points. On the right lung there is some emphysema of the upper lobe, the base is hepatized, but not to the same extent, nor is it so far as the third stage, as on the left. The heart is large and very soft, it weighs fully fourteen or sixteen ounces, its muscular texture is extremely soft, and the walls of each of the cavities are thinned, the left auriculo-ventricular opening is very much contracted; it will not do more than permit the passage of my index finger; the bicuspid valves are very much infiltrated and thickened with a deposit of a bony hardness, the aortic opening is of a normal size, its valves are infiltrated as described, but scarcely to the same extent. The liver and spleen are healthy. The kidneys would certainly weigh five or six ounces each, they are healthy, but congested. The other abdominal viscera do not require observation. The brain is healthy, there is some opacity of the arachnoid on the upper surface of both hemispheres."

It was these effects of disease as discovered before and after death, which led these gentlemen to express the opinion in the broadest and strongest terms, that the mind of the testator was incapable of that continuous and independent action required in making a will. That this opinion is entirely unwarranted by the well recognized truths of physiology and pathology, I shall now proceed to show.

The very considerable diminution of the breathing capacity of the lungs revealed after death, does not

imply that, in the very nature of things, the blood was imperfectly purified on the 20th of May, 1871, or at any time, except at the closing hours of life. This notion that the blood sent to the brain was loaded with carbon, was founded on several fallacies respecting the parts performed by the lungs and some other organs in the animal economy, and on a gratuitous assumption respecting the progress of the disease.

On the side of the proponents, nine medical witnesses appeared, including the writer, most of them justly eminent as teachers and practitioners of medicine. They insisted chiefly on that well known law of the animal economy, whereby organs engaged in the performance of kindred offices, may, under stress of disease or other peculiar circumstances, assume, to some extent, the functions of one another. This *compensation of function*, as it has been called, is observed every day by the practicing physician. Very close is this relation between the lungs, skin, liver and kidneys, in the performance of the common duty of relieving the blood of its effete particles. When the secretory action of the skin is interrupted, the lungs or kidneys, or both, take on an extra amount of duty, and when it is increased beyond the normal quantity, the kidneys respond to this unusual activity, by secreting a smaller quantity of urine. If the function of the liver be deranged, highly carbonized products make their appearance in the urine. When the kidneys fail to eliminate the proper amount of urea, it may be found in the perspiration or in the evacuations from the intestines. And so, too, when the lungs fail to excrete all the carbon from the blood, according to the requirements of the economy, the skin increases its secretion of carbonic acid.

There are other considerations involved in this question, which were entirely disregarded by the contestants'

witnesses, and which could not very well be presented on the witness stand, in a thorough and orderly manner, by those on the other side. By the former it was assumed, for their starting point, that any diminution of the normal capacity of the lungs must necessarily be followed, to that extent, by imperfect purification of the blood. This kind of logic, applicable enough to mechanical contrivances, will hardly answer here. The animal organs are so constituted that they can adapt their working power to the necessities of the occasion. Without this provision, life could scarcely endure; but with it, it meets successfully the shocks of accident, imprudence and disease. Thus the heart may double the number of its pulsations for days and weeks together, and then subside, without harm, into its normal rate of activity. The stomach, when forced to the task may digest twice the amount of food which the system requires, without contracting dyspepsia or inflammation. The skin remains sound and fit for its duty, whether pouring out the matter of perspiration in streams, or in particles too minute to be visible. For years together, the kidneys, under the stimulus of certain medicines or drinks, may secrete far more than the normal quantity of urine, without any appreciable damage. Probably, no organ possesses a greater amount of this reserved power than the lungs. The twenty inspirations per minute, sufficient for every purpose, in a person at middle age, and in complete repose, may, under the pressure of febrile excitement or violent exercise, be raised to thirty. Tubercles, abscesses, indurations, may waste their substance, and fashionable modes of dress may impede their motions, while they still continue to act with no sensible diminution of their allotted part in the economy of the system.

One has not to search very far to find this fact of reserved power in the lungs clearly set forth, for it is recognized in every modern book on physiology. Turning over the leaves of the last one out, Dr. Austin Flint's, we find it stated that while the average volume of breathing air, in a man of ordinary stature, is twenty cubic inches, it may, under excitement, rise to seventy-seven inches. In the same work it is stated that the extreme breathing capacity, by which is meant the volume of air that can be expelled from the lungs by the most forcible expiration after the most profound inspiration, may be diminished ninety per cent., in phthisis pulmonalis, and life still be maintained. The late Dr. John Gorham of Boston, once made an autopsy of a man who died after a few days illness, not involving the lungs, in whom one lung was found shriveled to half its normal size, and so solidified as to be perfectly impervious to air. His wife declared, that with the exception of a bad cold some dozen years before, he had suffered no ailment that could be referred to the chest. And yet this man belonged to a musical band, and played on the French horn up to the beginning of his last illness.*

So too the records of clinical pathology are full of illustrations of this truth. In such works as Broussais' *Histoire des Phlegmasies*, and Andral's *Clinique Medicale*, the reader will find scores of cases in which the lungs were reduced, by the ravages of disease, to one-half or less of their normal capacity, while not one word is said about coma or delirium, except, perhaps, in the final hour. An autopsy of a subject of chronic phthisis, furnished by my friend, Dr. J. S. Parry, of this city, tells the same story. "In the upper lobe of the left lung was a cavity nearly as large as one's fist, filled

* New England Jour. of Med. and Surg., October, 1823.

with mucous and puriform matter. Below this were several smaller cavities filled with the same substance. The remaining portions of the upper lobe were filled with yellow, cheesy deposits, mixed with miliary tubercles. The lower lobe was filled with the same cheesy masses, mingled with miliary granulations. In the apex of the right lung was a cavity about half as large as that on the opposite side. The whole upper lobe was filled with cheesy deposits and riddled by small cavities, among which were some miliary tubercles. The lower lobe contained many pneumonic deposits and miliary tubercles, but in no place had the former begun to soften. This portion of the organ, which was the only part that crepitated on pressure, was deeply congested." Here was a pair of lungs reduced to, at least, one-quarter of their proper breathing capacity. And yet it is recorded of this man, "that up to the time of his death, his mind was perfectly clear, so that he was able to make his will, and give directions in regard to his business."

There is another point in the pathological aspect of the question, which, though utterly ignored by the contestants' experts, is fatal to their conclusion. The testator was incompetent, they say, because in the condition of the lungs as presented by the autopsy, the blood could not have been purified. This implies, of course, that the lungs were in the same state on the 20th of May, when the will was executed—with as much hepatization and congestion, and as much imperviousness to air—as they were found to be twelve days afterwards. That this is an assumption, totally unwarranted by all our knowledge of diseased action, no pathologist really deserving the name, will deny. It would be a thing unprecedented, if there had been no progress of the disease during the last ten or eleven days of life.

It is a well recognized fact that the three stages of pneumonia, as described by writers, may be completed within a few days, and these gentlemen, let us bear in mind, strongly insisted that this was a case of acute pneumonia. It will be seen, presently, that the dispositions of the will, with a few exceptions, were embodied in a will which was executed on the 10th of May—ten days before—and surely, it can not be contended that the condition of the lungs, as revealed by the autopsy, had existed for twenty days. Legally, of course, that first will is without effect, but pathologically considered it strongly confirms the validity of the final will. So that if there was any period when the disease rendered the decarbonization of the blood impossible, it could not, in all probability, have been on the 20th of May, and much less on the 10th.

It is obvious enough, without farther discussion, that the testator's case, medically regarded, is only an illustration of that well known law of the animal economy, whereby an organ having a considerable range of function, may become incapable in one sphere of its activity, and yet remain perfectly competent in others. Thus, Mr. Duncan, though quite unable on the 20th of May, to walk a thousand miles in a thousand hours, was as competent to make his will as he ever was in his life.

If this repetition of elementary truths, which every physician may be supposed to have learned during his pupilage, may seem like a trifling with the understanding of the reader, I need only say in excuse, that a pathological dogma, ignoring them altogether, served as a pretext for annulling the exercise of one of the most sacred rights of men.

The reader must have already anticipated the question whether there was anything in the circumstances connected with the will to furnish the slightest support

to the contestants' theory—for it was nothing but a theory—and in reply, I am obliged to say, nothing, absolutely nothing. On the contrary, the whole transaction was singularly free from suspicious circumstances. The dispositions of the will, with one or two exceptions, originated with himself, many of them are in accordance with previously expressed intentions, a considerable length of time was taken to perfect the instrument, and he was surrounded by friends who had no views adverse to those he might be supposed to have entertained respecting the disposition of the great bulk of his property. If he was incapacitated by carbon in his blood, he must have manifested either coma or delirium, as no other mental disturbance has ever been known to result from that cause. If it be shown that neither was observed in the whole course of the disease, except perhaps in the last hours, then the carbon theory must be abandoned altogether, and resort must be had either to delusion, or to that general weakness and hebetude of mind on which undue influence can be easily exerted. Let us see if the circumstances attending the making of the will furnish any more indication of these mental conditions, than the truths of physiology and pathology do of undecarbonized blood.

It appears that the testator went to Europe in 1870, and while visiting Mr. James Lindsay, residing near Belfast, Ireland, with whom he had been previously acquainted, had one of his asthmatic turns; that he apparently recovered and spent the winter in the South of Ireland; that in April, 1871, he returned quite ill to Mr. Lindsay's; that about a month before his decease, he expressed to Mr. Lindsay a wish to make his will, and asked him to ascertain if there was a lawyer in Belfast who understood American law; that Lindsay called on Dr. James Rea, the American Consul,

from whom he obtained the form of a will from an American book; that the testator declined acting just then, but on the 8th of May, requested Lindsay "to take down particulars for the making of his will," which he did the next day; that from these instructions, a will was drawn by James Stewart, clerk of a solicitors' firm in Belfast; that the clerk then called "and remained alone with the testator for a considerable time," and then "came down into the parlor and engrossed the will;" that witnesses were then called in, and the will duly executed. Mr. Stewart says that various alterations of little importance were made, some at his suggestion, and some at the testator's, and at last, no other person being present, he asked the testator "if the draft will was satisfactory, and whether it carried out his wishes," when he replied to both questions, affirmatively. He also asked testator "if there was any undue influence brought to bear upon him to induce him to make his will in the manner proposed, to which he replied, 'none whatever, my brothers have treated me badly, and there will likely be litigation with respect to my will, as I am sure they will be displeased.'"

To his brother Francis, he gives \$5,000, and to Richard, \$10,000. To his brother George, \$5,000, and all his property in the oil regions, together with his interest in Pit Hole City, and the Town of Plummer. To his brother James, he leaves an estate estimated to be worth about \$11,500 "together with sufficient to pay for a gardener and two female servants, after his death, to be given to my brother George's oldest child, should my brother James die before said child would be twenty-one years of age, then the trustees to let the same, and the proceeds to be properly secured for him when he comes of age." His brother William and sister, Mary

Jane, he says, "are already provided for." To his mother, he gives a yearly income of \$2,500, to be obtained by the sale of various estates in Ohio, Illinois, &c., together with his house in Pittsburg, "to be furnished at an expense of \$5,000." To Fanny Howard, he gives \$10,000; to William Jackson, \$20,000; to William Wilson and Charles Wilson, \$10,000, each; to Miss Sarah Prather, \$30,000; to Ann Yorke, \$10,000; to James Lindsay, \$10,000; to his physician, Dr. Aickin, \$3,000; to Bishop Simpson, \$40,000; to James Long, \$30,000; to his two daughters, \$10,000 each, and to his two sisters, \$15,000 each; to the Methodist Church of Battle Creek, to pay off a debt, \$10,000; to the Methodist Church of Pit Hole City, for remodeling the church, \$10,000; to the Methodist Church in Plummer, for finishing off the church, \$25,000; to the Methodist minister, Leach, if alive, \$5,000; for a monument over his father and himself, \$30,000. After providing for his just debts and funeral expenses, he provides that the residue of his estate shall be applied to whatever religious Methodist object his executors may think best. At the suggestion of Mr. Stewart, he provided that if any of the parties named in his will should contest or dispute the validity thereof, the bequests to such parties should lapse and form a part of his residuary estate. Accompanying the instructions for the first will was a schedule of his property, indicating the various places where he owned real estate, with their estimated value, and also various securities with their value and the place where they were deposited, specified.

Such were the dispositions of the will made on the 10th of May, and all the circumstances of any significance attending it. As the two subsequent wills varied from this in only a few particulars, we may as well examine the dispositions of this the first will, because if

they present no indications of mental unsoundness, it can hardly be supposed that they would produce any different impression when found in a subsequent will, while, if they should present such indications, the fact would be equally damaging, of course, to any subsequent will in which they occur.

The first thing that arrests attention, is the smallness of the bequests to his brothers, indicating as they seem to, some lack of filial affection, calculated to excite suspicion. That he had reasons for such action is abundantly shown by the testimony in the case,—reasons which, however inadequate they may appear to others, show no marks of folly, and are such as have shaped the descent of many an estate. He was not on good terms with his brothers. He was displeased with their conduct; and, whether he was too exacting, or they too careless of his wishes, the feeling which it engendered was of the kind not likely to enhance their claims on his bounty. To Mr. Lindsay, he said, “I have been badly treated by my brothers,” and, of his elder brother, James, he said, “that he had given him upwards of fifty thousand dollars already, and that if he had all the money he had he would soon run through it.” He also told Mr. Lindsay that two of his brothers, [Frank and Richard] once came into his room and threatened to throw him out of the window, and that it was in consequence of their bad treatment that he got his first attack of hemorrhage. To leave them money, he said, would be no benefit, but rather an evil to them. With his brother William, to whom he gave nothing, he had had some business relations which led to no good feeling on his part. The evidence shows that he thought his brother had dealt unjustly by him, and that for some time before his death he broke off all intercourse with him.

The other legatees were mostly persons in whom he had become more or less interested by habits of familiar association, by favors or services received, or by sentiments of mutual respect and sympathy. Fanny Howard is a little girl, whose acquaintance he made while visiting his brother James, in Ohio, near whom her family resided. He was highly pleased with her ways, manners and little accomplishments. Charles Wilson was a fellow-workman with him in the Novelty Works, before he went to the oil regions. William Wilson he became acquainted with in Plummer, and they worked and sympathized together in the church and Sunday School. With William Jackson he got acquainted in Pittsburg. He was a blacksmith, and had lost the use of one eye. Mr. Leach was a Methodist preacher with whom he had become acquainted. Miss Prather is a sister of his partner, when he lived in Plummer; and in the course of a familiar and frequent intercourse with the family, he became acquainted with and interested in her. With the Lindsays he had been on intimate terms, making their house his home, in health and sickness, receiving from them, care and attention, and kindness that could not be purchased. Dr. Aickin was his physician, and as testators sometimes do, he remembered the doctor in his will. With Bishop Simpson he had been acquainted many years, meeting him from time to time, soliciting his advice, conferring with him on matters of mutual concern, and always professing the strongest admiration of the Bishop's character. With Mr. Long and his family he had been intimate for several years, making his house his home whenever he was in Philadelphia. In the churches, for the advancement of which he provided, he had been strongly interested. He had worshipped in them all, and one of them he had helped to build.

So far, certainly, there seems to be no ground of suspicion. The testator devised his property, after the usual manner of men. For his mother, to whom he was strongly attached, and for the memory of his father, he provides most liberally. Upon his brothers he bestows as much as he thought they would properly use. A part of his fortune he devotes to public purposes, selecting those in which he had been most concerned, both as a matter of personal feeling and regard for a sacred cause. The rest of his fortune he distributes among his friends.

The next day, soon after breakfast, Dr. Aickin says he found him in a very excited state, walking up and down the room, having been smoking stramonium by his physician's direction. Expressing a wish to see Mr. Lindsay, that gentleman came in, when the testator said to him, "have you got that deed," referring to the will he made the day before. Having obtained it, he looked over it attentively, and then tore it in pieces in an excited manner, saying, "Gentlemen, you must excuse me, I can not do this," or words to that effect. The next morning he told the Doctor that he destroyed the will, because "there were sums of money left by it to parties which he would not like his relatives to know of, as the amounts were out of proportion to the position in life of the persons to whom they were left." Four or five days after, he requested Mr. Lindsay to have his will made again, and on being asked if he wanted any changes made, he directed that the names of Fanny Howard and Charles Wilson should be omitted. On being asked if he wished for any other change, he said, no. Mr. Lindsay then said to him, "I think you have left too little to your own family;" "I think you should make up your mind to die in charity with your own friends." He replied that they did not deserve it; they

had treated him badly, and money would do them no good, but directed that \$5,000 should be inserted for his brother James, \$5,000 more for his brother Frank, and \$10,000 for the use of a blind daughter of his brother James. This will was duly executed on the 16th of May.

Dr. Rea, American Consul at Belfast, who was called in by Mr. Lindsay to witness and authenticate this last mentioned will, says he asked testator if he apprehended any contest over his will, when he replied that he did apprehend it. He thought his brothers might contest it because he had not left them all his property, adding, "my reason for not leaving them more, is that they are not worthy of it, and it would do them more harm than good, for whilst I have been earning money, they have been swinging around me, instead of trying to earn for themselves." Whereupon the Doctor gave it as his opinion that there were two legacies in the will that might, under such circumstances damage it, as possibly tending to prove undue influence, naming the legacies to Mr. Lindsay and Dr. Aickin. To this the testator replied, "then they must come out of it," and directed the Doctor to have a new will drawn, precisely similar in every respect, with the exception of those two legacies, saying at the same time, "I consider those legacies as justly due those gentlemen, and I would be very glad if I could give them the amount in any other way." The Doctor then suggested that he might give them promissory notes for the same sums, which he immediately decided to do. Accordingly, another will was drawn, precisely like the last, except that these bequests to Mr. Lindsay and Dr. Aickin were omitted, and was duly executed on the 20th of May.

In regard to the execution of this will, the testimony of Dr. Rea is remarkably significant. He says, "hav-

ing finished the reading of the will, deponent asked testator 'if that will was entirely to his mind,' to which testator answered, 'yes, entirely to my mind.' Deponent then asked testator whether he had been moved by any ecclesiastical person or persons, to make certain of the bequests to ecclesiastical persons and for ecclesiastical purposes contained in the will, to which testator answered, 'no, that he had made them of his own free will and volition, without any suggestion from any other person.'" Dr. Rea also said that he visited the testator every day from the 20th, as long as he lived; that they often conversed about the will, and that the testator always declared that he was perfectly satisfied with it.

Depositions were submitted to the jury, of the subscribing witnesses; of the person who drew the wills and attended to their execution; of Dr. Rea who became acquainted with the case by virtue of his consular office; of an old friend, the Rev. Robinson Scott, who visited him occasionally during his illness; of Mr. and Mrs. Lindsay; and of his physician; and they all declare that, to all appearance, the testator was perfectly rational and in possession of all his senses, except during the last two days of his life, when his mind occasionally wandered; nor was there a single syllable of testimony of a contrary character. Certainly, then, there was no coma nor delirium, but it does not necessarily follow that there was no delusion. The testimony regarding it was only negative, but that must be considered as conclusive, in the absence of any evidence the other way. It was shown very clearly that his dislike of his brothers was not the offspring of delusion or of any morbid feeling. It was no sudden fancy, but a deliberately matured conviction that they had not treated him well, and that, such were their

habits, much money would do them no good. His story of his brothers, on one occasion, threatening to throw him out of the window, if not literally and entirely true, had a broad foundation in fact. One of the brothers, in describing the scene referred to, testified that they did not exactly threaten to throw him out of the window, but only said, that if he were not his brother, he would throw him out of the window. The bequests to the Methodist churches presented indications, the contestants declared, of mental unsoundness, because they are so large as to be greatly, even ludicrously disproportioned to those churches' several necessities. Not only was \$25,000 a sum that could scarcely be used up in finishing the church in Plummer, as directed in the will, as the original cost of it was only about \$3,000, and all needed repairs could be made for \$300 or \$400, but the town itself was then in a decaying condition, having now only some fifty or sixty houses. Pit Hole is but little larger, and as one witness testified, \$10,000 could scarcely be put upon it, and make a church of it, and that place also had gone down. It appeared too that \$5,000 would have been sufficient to finish and repair the church in Battle Creek. On the other hand it was testified that the testator was strong in the faith that those places would revive, and if in this particular, he was more sanguine than the circumstances warranted, the fact should be attributed to a natural partiality for places connected in his mind with agreeable associations, rather than to any form of mental disease. And this feeling, no doubt, rendered him careless as to the exact amount that might be immediately required, knowing that any surplus would be usefully disposed of. In this connection, it may be stated that this kind of disposition of his property was in accordance with views he had previously expressed. Bishop Simpson testi-

fied, that in conversation with him some years before his death, he, the Bishop, suggested that the testator would do much good with his money by endowing some literary institution. Shortly after he wrote a letter to the Bishop, in which he said he preferred to give his money to Sunday schools and poor churches.

I have intimated that during the testator's last illness, there was nothing in his conduct or conversation indicative of mental disorder. It appears, however, that about the 25th of May, five days after the will was made, he asked Dr. Aickin, "whether he, the testator, could not get a ship to charter to take him and deponent, and the nurse to America." This was alluded to by counsel as indicative of a disjointed mind, but to me it conveys no such meaning. If he thought his case not quite so desperate as others did, it was a kind of self-deception not uncommon, by any means, with the subjects of pulmonary disease, and to a man of his means the expense of such a step could not have been a piece of reckless extravagance.* To wish to see his mother once more, and breathe his last at home, scarcely looks like consummate folly.

The mental disability supposed to have been produced by the pulmonary disease, was spoken of in very general terms—rather as a constructive than an actual disability. The experts who staked their reputation upon its existence were not even asked to indicate what faculty of the mind was at fault, or what disposition of the will, or incident in the making of it, "sounded to

* The friends of a patient once under my care, having concluded to take him home, and wishing to avoid the exposure and other inconveniences incident to a passage by the regular steamer, hired one expressly and solely for the purpose, though not so able to afford the expense as Mr. Duncan was.

folly." Had there been any coma or delirium—the inevitable results of undecarbonized blood—there would have been abundant reasons for asking these questions. And thus we have the extraordinary case of medical experts, called to testify as to the competency of a testator, telling the court and jury what, in accordance with their pathological theories, ought to have been his mental condition, not what it really was, as shown by the circumstances of the transaction. One might search long before finding a parallel to a case like this. In fact, the counsel, in order to sustain their position, were obliged to rest upon another theory totally independent of the characteristic effects of vitiated blood.

Some stress was laid on the opacity of the arachnoid, as if that ought to have given rise to some mental disturbance, and I regret to say that the idea received some countenance from the contestants' experts. It may be dismissed with a single remark. Every one who has made many autopsies will tell us that such opacities are witnessed in a large proportion of subjects where the mind has been clear and sound to the last. In this case it signified nothing whatever, respecting the mental condition, as was stated by the experts on the other side.

What was relied upon more than anything else for the purpose of breaking this will, was the charge of undue influence. To appreciate this charge properly, it should be understood that influence does not necessarily vitiate a will. In a large proportion of wills, the dispositions are more or less the result of influence, and if this were oftener so, there would, undoubtedly, be fewer instances in the world of unjust or foolish wills. When a man comes to distribute his estate among those who seem to have claims upon his bounty, he naturally seeks the advice of others, and is governed, in some de-

gree, by their suggestions. Such an influence works no injury to the instrument, in the view of law or of common sense. On the other hand, in the case of persons whose minds have become weakened by old age, by sickness, or by congenital infirmity, the law looks with great jealousy on the exercise of any influence, and especially by those who are benefited by it. This it is, which may become what is technically called *undue influence*. The law supposes that in the abnormal conditions here mentioned, the mind having lost, in some degree, its proper stability and clearness of perception, readily yields to the suggestions of others, and thus makes testamentary dispositions very different from such as it would have made in its ordinary state of health. The charge of such influence must have for its foundation satisfactory evidence of mental weakness exhibited in other matters than those directly connected with the testamentary act. A *prima facie* case must be shown, before the alleged influence can be pronounced to be undue. In regard to this distinction, juries are apt to be misled, willingly or otherwise; and in the present case, probably, the result of the trial was the offspring of that sort of mistake. That influence was used, nobody denied, but the evidence respecting the mental manifestations of the testator during the whole month of May, furnishes no proof of weakness or decrepitude, of freaks or fancies, and consequently fails to afford the requisite foundation for a charge of undue influence. Even if such a foundation had actually existed, the charge would fail, because the testamentary dispositions, for the most part certainly, obviously originated in the independent exercise of the testator's own will. That such was the fact in regard to the bequests to his brothers, and to most of the legatees, can scarcely be doubted, because they indicate

circumstances not likely to be known to those around him. The influence was all in favor of the brothers, not against them. It effected an addition of \$5,000 to the legacy of one, and \$10,000 to the little blind child of another. At the suggestion of others, he revoked certain bequests, and substituted for them direct gifts, for reasons that would have amply justified the change had he been unequivocally sane.

The idea of undue influence is simply preposterous when we consider who the persons were who had access to him, and the only motives by which they could possibly have been governed. If the Lindsays or Dr. Aickin had conceived any mercenary designs, their policy would have been, after securing their own portions, to propitiate the heirs-at-law, by turning the rest of it into their hands. The Rev. Robinson Scott, who visited him in the early part of his illness, might possibly have advised him to make large bequests to Bishop Simpson and Mr. Long, as being members, with himself, of the Methodist Church, though he says emphatically that he did not; but had he done it, he could not have better served his purpose than by discouraging every other bequest than those made to the heirs-at-law. Had this gentleman been disposed to exercise any influence, it would have been, most likely, to obtain an endowment for the college with which he is connected—an object towards which the testator had seemed to be favorably inclined at a former period. How Dr. Rea used his influence, we have already seen, and it is scarcely possible that he could have been led to use it in any other way. This disposes of the charge of undue influence, it being as groundless as that of coma and of delirium, and thus nothing remains to impair the validity of Mr. Duncan's will. In connection with the notion, so steadily held up by the contestants, that sinis-

ter influence was exercised to turn this estate into the hands of Methodist people, the reader must understand that of the few persons above mentioned, as having access to the testator, one only, Mr. Scott, belonged to that persuasion.*

Here ends the ungracious task of exposing some features of a trial little calculated to shed much lustre on the Medical Jurisprudence of our country,—a task undertaken only that its lessons might not be lost on those who, by virtue of their profession, may be called to assist as medical experts in the administration of the law. Let it teach them that in that capacity they are bound by more than the Hippocratic oath, to serve as faithful ministers of science, casting aside every ignoble prepossession born of the time or the place, and laying upon her altar the offering of an intelligent investigation and an honest purpose.

* The reader may be interested in knowing that the jury disagreed, standing ten against the will, and two for it. A compromise was then effected.

